

January 24, 2003

Pamela M. Bush, Esq.
Secretary
Delaware River Basin Commission
P.O. Box 7360
West Trenton, NJ 08628-0360

Re: City of Philadelphia's Comments on the PCB TMDL Stakeholder Implementation Process

Dear Ms. Bush:

Thank you for the opportunity to comment on the report prepared by the Marasco Newton Group, Ltd. (MNG Report). With only one reservation, the City of Philadelphia enthusiastically supports the MNG Report. The analysis and recommendations contained within the Report are intelligent, honest, and well conceived. The report presents a sensible and logical pathway through the difficult process of TMDL Implementation. Even more importantly, the MNG Report represents the continuing evolution of the PCB TMDL process into one in which all the stakeholders use their energies and resources to work together to achieve a common goal.

As you know, the City has been involved in the PCB TMDL process from its inception. We fully appreciate the enormously complex task that DRBC has before it. Dealing with the scientific and regulatory uncertainty inherent in a complex TMDL process, while trying to consider the interests of all stakeholders, is a daunting task. DRBC, to its great credit, has worked hard to pull all the stakeholders together to achieve our common goal of improving water quality in the estuary.

Over the past year, we have been able to shift from rhetoric to resolve. We have marshaled our scientific experts – those belonging to Limno Tech, DRBC, Hydroqual, the City of Philadelphia, DuPont, Rohm and Haas, and others to share information and work together on solving the enormously complex scientific issues. We've jointly focused on trying to understand and quantify the sources and pathways of PCBs into the estuary and their water quality impacts. Much more still needs to be done, but by working cooperatively in the scientific arena we'll achieve the synergy necessary to really begin to understand the problem and offer sensible solutions.

What we are accomplishing in the scientific arena, I see the MNG Report as achieving in the implementation arena. I have had the luck (or misfortune as the case may be) to see complex TMDLs not only in the Delaware, but also throughout the country. Anyone who has spent any time with complicated TMDLs like the PCB TMDL-- where we have multiple sources and pathways of a complex and bioaccumulative pollutant-- will tell you that the answer is reached through dialogue and jointly developed strategies.

When talking about technology based effluent limit guidelines – the federally promulgated pollutant discharge limits set on an industry by industry basis – the old paradigm of regulatory control works well. The standard is set. The endpoint is known. The equitable distribution accomplished. (All industries within the category must meet the same standard).

When we move into the realm of water quality based TMDLs the simplistic technology based implementation strategy is of no help. In this realm there is no other way to succeed but through cooperation and coordination. The MNG Report clearly recognizes this fact.

The more cynical among us might say that this approach only fosters delay or inaction, or a “bad” result. The City rejects such cynicism. Everyone at the City is committed to improving water quality. (As I’m sure all the stakeholders are). No one at the City believes in inaction (Ditto for the other stakeholders I’m sure). We have implemented a track down process to find and deal with PCBs. We are committed to taking steps now, even before we can fully complete the TMDL, to minimize PCBs entering the estuary.

The best analogy to a successful TMDL Implementation strategy that I can think of is democracy itself. It’s difficult, it’s cumbersome, but it’s the only system that works and endures. If we follow the recipe put forth in the MNG Report-- commitment, cooperation and coordination—we will achieve our ultimate goal of improving the estuary. If we default to a more simplistic and easier approach, we waste our energies and resources. That would be a colossal tragedy.

The only caveat I have with the MNG Report is the concept that “alternate” or “default” wasteload (WLA) and load (LA) allocations will first be developed and then handed to the Implementation Advisory Committee (IAC) for it to change or modify. The role of the IAC should not be to take “default” WLAs or LAs and then change them. All this does is breed contention and makes the IAC’s job 100 times more difficult, as it tries to start from a conclusion not driven by a finished scientific product or collaborative education, discussion and debate. The purpose of the IAC is to look at the developed scientific information on sources, pathways, loadings, water quality impacts, etc. and jointly develop the best and most sensible allocation strategies. I would urge you to let the IAC work as discussed, and to let it first develop WLAs and LAs through the process described in the MNG Report.

In conclusion, the City wishes to thank DRBC and the Marasco Newton Group for insisting that TMDL implementation be done the right way – no matter how trying or difficult the right path may be.

Sincerely,

David A. Katz
Deputy Water Commissioner
City of Philadelphia